

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET
CIVIL APPLICATION NO.670 OF 2003
IN
SECOND APPEAL NO.439 OF 2003**

.....
Office Notes, Office
memorandum of Coram,
appearances, Court's
orders or directions
& Registrar's orders.
.....

Court's or
Judge's orders

Mr.N.V.Walawalkar for the Appellants
Mr.S.M.Railkar for the Respondent No.1

**CORAM: A.S.OKA, J.
DATED: AUGUST 18, 2004.**

P.C.:

1. Rule. The Respondent No.1 waives
service. Taken up for hearing forthwith.

2. There is a decree for possession
passed in respect of agricultural land in
favour of the Respondent No.1 who is
claiming to be the managing trustee of the
Trust. The Trial Court has passed a
decree directing the enquiry to be held
under Order XX Rule 12 of Code of Civil
Procedure, 1908 for determination of mesne
profits. As the Second Appeal is admitted
for final hearing, decree for possession
cannot be allowed to be executed.
However, unconditional stay cannot be
granted as the claim of the Respondent

No.1 for mesne profit will have to be secured.

3. Shri Walawalkar for the Appellant/Applicant stated that at present the yearly rent is Rs.400/-. Considering the facts and circumstances of the case, the Appellants/Applicants will have to deposit a sum of Rs.5000/- per year by way of compensation from 1st January 2004 till the disposal of the Appeal.

4. Hence Civil Application is disposed of by passing the following order :

i) Execution of the Decree for possession shall remain stayed till the final disposal of the Appeal subject to the following conditions :

a) The Appellants shall deposit in the Trial Court arrears of the rent at the rate of Rs.400/- per year up to 31st December 2003 within a period of six weeks from today.

b) The Appellants shall deposit in the Trial Court a sum of Rs.5000/- per year

from 1st January 2004 till the disposal of the Second Appeal. The sum of Rs.5000/- for the year 2004 shall be deposited by the Appellants in the trial Court on or before 30th September 2004. The compensation amount for subsequent years shall be deposited on or before 31st

January of every year.

c) The Appellants will not create any third party interests and will not part with possession of the suit land in favour of any third party.

ii) The Respondent No.1 will be entitled to withdraw the sum of Rs.5000/- deposited every year by the Appellants in the Trial Court. The deposit of the said amounts and withdrawal thereof by the Respondent No.1 will be without prejudice to the rights and contentions of both the parties and subject to final result of the Appeal.

iii) In case the Appellants commit any breach of conditions imposed for grant of stay, the Respondent No.1 is at liberty to apply for vacating the stay.

Judge.